IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 263 OF 2006

IN

SUIT NO. 1626 OF 2006

Narendra J. Rajani .. Plaintiff .

vs.

Manubhai Thakkar and Assocites

& Ors. .. Defendants.

Ms. Somya Shrikrishna i/by Shantilal & Co.

for plaintiff.

Mr. C.N. Chavan for defendant no. 5.

CORAM : S.U.KAMDAR, J.

DATE : 1st February, 2006.

P.C.

. The present notice of motion has been taken out for setting aside the ex-parte decree dated 20.2.2004. The said ex-parte decree was passed in Summary Suit No. 1626 of 2003 on the ground that inspite of service the defendant has failed to file Vakalatnama and seek leave to defend. In support of the present application the only averment made in para 3 of the affidavit in support is that though the postman/bailiff visited the premises in first

week of July, 2003 and the wife did not accept the service but she never refused to accept the notice and directed the postman to the office of the defendant where he was available. In my opinion, no ground is made out whatsoever for setting aside the ex-parte decree. The service was attempted and the service was refused and in view of the refusal of the service by the wife the decree is passed. Apart therefrom, I do not find any special circumstance for setting aside the decree. Motion dismissed. No order as to costs.

C.C.expedited.